

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21**

**COUNTRY VILLA SOUTH BAY, LLC d/b/a
COUNTRY VILLA BAY VISTA HEALTHCARE**

Employer

and

Case 21-RC-21184

**SEIU, SERVICE EMPLOYEES INTERNATIONAL
UNION, CTW**

Petitioner

**HEARING OFFICER'S REPORT
AND
RECOMMENDATIONS**

This report contains my findings of fact, conclusions and recommendations regarding the Employer's objections to the election in the above matter. Following a hearing where all parties presented witnesses and evidence, I recommend that the Employer's objections to the election be overruled and that a certification of representative be issued.

I. Procedural Background

The petition in this matter was filed on January 29, 2010. Pursuant to a Stipulated Election Agreement approved on February 5 2010, a secret ballot election was conducted on March 10, 2010, in the unit agreed appropriate for collective-bargaining.¹

¹ The collective-bargaining unit agreed appropriate in this matter is as follows:

Included: All full-time and regular part-time certified nursing assistants (CNAs), restorative nursing assistants (RNAs), dietary aides, housekeeping aides, laundry aides, maintenance workers, activities assistants and cooks employed by the Employer at its facility located at 5901 Downey Avenue, Long Beach, California;

The tally of ballots served on the parties at the conclusion of the election showed that of approximately 47 eligible voters, 26 cast ballots for, and 18 against, the Union. There were no void ballots and there was one challenged ballot, which was insufficient in number to affect the results of the election. The Employer timely filed objections to the conduct of election and/or conduct affecting the results of the election. The Regional Director investigated the objections and, on April 8, 2010, the Regional Director issued and served upon the parties his Report on Challenged Ballots and Objections and Order Directing Hearing, in which he concluded that Employer's Objections Nos. 2, 3 and 4 could best be resolved by a hearing. Thereafter, the Employer filed a timely Request for Review on April 22, 2010, as to the recommendation to overrule their Objection 1. On April 27, 2010, the Acting Regional Director issued and served upon the parties a Supplemental Report on Objections, Order Directing Hearing and Notice of Hearing, in which he concluded that Employer's Objections Nos. 1, 2, 3 and 4 could best be resolved by a hearing. Pursuant thereto, a hearing on the Employer's objections was held in Los Angeles, California, on April 29, 2010.² All parties were given a full opportunity to be heard, to examine and cross-examine witnesses, and to present evidence pertinent to the issues.

Upon the entire record of the hearing and my observation of the witnesses, their demeanor and testimony, I make the following findings of fact, conclusions, and recommendations:

Excluded: All other employees, registered nurses (RNs), licensed vocational nurses (LVNs), business office clerical employees, receptionists, medical records employees, managerial and administrative employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

² The transcript of the hearing is hereby corrected to delete reference to "Hearing Officer McGruder" and substitute instead "Hearing Officer Hermosillo" from page 37 to page 70 of the Official Transcript. In this report, Petitioner is also called the Union.

II. Preface

This report is, unless otherwise noted, based on a composite of the credited aspects of the testimony of all witnesses, unrefuted testimony, supporting documents, undisputed evidence, and careful consideration of the entire record, including each party's oral argument on the record.³

Although each iota of evidence, or every argument of counsel, is not individually discussed, all matters have been considered. Omitted matter is considered either irrelevant or superfluous. To the extent that testimony or other evidence not mentioned might appear to contradict the findings of fact, that evidence has not been overlooked. Rather, it has been rejected as incredible or of little probative value. Unless otherwise indicated, credibility resolutions have been based on my observations of the testimony and demeanor of witnesses at hearing. NLRB v. Brooks Camera, Inc., 691 F.2d 912, 915, 111 LRRM 2881, 2881 (9th Cir. 1982); NLRB v. Ayer Lar Sanitarium, 436 F.2d 45, 49, 76 LRRM 2224, 2226 (9th Cir. 1970). Failure to detail all conflicts in testimony does not mean that such conflicting testimony was not considered. Bishop and Malco, Inc., d/b/a Walkers, 159 NLRB 1159, 1161 (1966). Further, the testimony of certain witnesses has been only partially credited. Kux Manufacturing Co. v. NLRB, 890 F.2d 804, 132 LRRM 2935 (6th Cir. 1989); NLRB v. Universal Camera Corp., 179 F.2d 749, 754, 25 LRRM 2256 (2nd Cir. 1950), *rev'd on other grounds*, 340 U.S. 474, 27 LRRM 2373 (1951).

³ The Employer and the Petitioned declined to file briefs in this matter.

III. The Objections

Objection No. 1

During the Election, the Board agent permitted the Union's observer to give a Spanish speaking employee direction on how to vote, thereby impermissibly delegating a major election duty to a party.

In support of this objection, the Union presented the testimony of Sam Watkins, a janitor and the Employer's observer during the election.⁴

In his testimony Watkins testified that during the morning session of the election, a voter, (he does not recall her name), came to vote. The Board agent asked for her name and she gave her name, then the observers checked her off the voter list. Then, the Board Agent handed the ballot to the voter. As the voter was heading to the booth the voter made a statement in Spanish to the Union's observer. The Union's observer responded by saying "si".⁵ The Board agent stopped the communication right away and told the Union's observer: "No, you can't do that," (Tr.78) and told the voter: "Wait a minute, you can't talk to her" (Tr.82). Then, the Board agent asked Watkins if he understood what was said by the voter and he said that he did not understand. The Board agent then translated what the voter had said. The Board agent told Watkins that the voter had asked if this was the correct location to vote and that the Union's observer had said yes. Then, the Board agent asked Watkins if he was comfortable with what had happened and Watkins testified that he was.

Watkins further testified that this exchange between the voter and the Union's observer lasted a few seconds and that he did not recall if there was anyone else in the room when it occurred.

⁴ The Election was held on March 10, 2010 and had two sessions: from 6:00 am to 8:00 a.m. and from 2:00 p.m. to 4:00 p.m. The Petitioner's Observer during the morning session was Maria (the record does not reveal her last name).

⁵ "Si" in Spanish is "Yes" in English.

Discussion of Objection No. 1

An election is set aside when the conduct of the Board election agent tends to destroy confidence in the Board's election process or could reasonably be interpreted as impairing the election standards the Board seeks to maintain. Athbro Precision Engineering Corp., 166 NLRB 966 (1967) (where a Board agent supervising the balloting was observed drinking beer with a Union representative during a break in the voting); Sonoma Health Care Center, 342 NLRB 933, 934 (2004) (The Board agent stated to two voters: "Companies don't like unions because they cannot fire or hire anyone, and they cannot take benefits from the staff").

In our case the Board agent maintained and protected the integrity of the voting procedure. At no time did the Board agent give the impression that she was biased or was giving the Union an unfair advantage. When this voter spoke Spanish to the Union's observer, the Board agent took charge by stopping the communication and warning all party's about the appropriate procedures and explained to the Employer's observer what had occurred.

The Employer contends that the Board agent's conduct was similar to Alco Iron & Metal Co., 269 NLRB 590 (1984) where the Board set aside the election because the Board agent conducting the election delegated to the Union's observer the duty to explain the election procedure to Spanish-speaking voters. The Board in Alco, at 591-592 found that the Board agent allowed the Union's observer to initiate the conversation with 8 to 10 voters while the Board agent only handed the voter a ballot after the Union's observer was done speaking to the voter; therefore, conveying the impression that the Union's observer was responsible for running the election. The Board concluded that such conduct was not compatible with the Board's responsibility to assure that elections are conducted properly.

In the instant case, the record established that the Board agent's conduct did not amount to the conduct in Alco. As described, the Board agent herein conducted the election in a

manner which meets the Board's standards. Accordingly, based upon the above discussion, I find no merit to Objection No. 1 and recommend that it be overruled.

Objection No. 2

During the actual time of the election, the Union engaged in electioneering on the sidewalk immediately adjacent to the polling place, targeting employees preparing to vote.

In support of Objection No. 2, the Employer presented the testimony of Certified Nurse Assistant Norma Elena Rodriguez, and Vice President of Human Resource Sharon Ginchansky.⁶

Description of Polling Place

The election took place in the Employer's parking lot, which is located adjacent to the Employer's building. There is a driveway off of Downey Avenue that leads into the Employer's parking lot. The polling place was approximately nine parking spaces from the Downey Avenue sidewalk.⁷ The Board agent parked her car in the Employer's parking lot, in front of the polling area, perpendicular to the Employer's building and parallel to Downey Avenue, so as to obstruct the view of the polling place from Downey Avenue.

Rodriguez testified that on March 10, 2010, at about 3:00 p.m., she was entering the Employer's parking lot from the Downey Avenue driveway to go to work and to vote. As she was entering the Employer's parking lot, another car was in the driveway, facing Downey Avenue and facing away from the parking lot. The person in the driver's seat of the parked car was Ana Cazun, a co-worker and a certified nurse assistant, herein CNA, who nodded her head and moved her lips

⁶ Ginchansky does not work out of the Employer's facility in question.

⁷ Each parking space appears to be about 8 feet wide. Thus, it is estimated that the polls were located about 72 feet from the Downey Avenue sidewalk.

as she looked towards Rodriguez. Rodriguez took this gesture to mean that Cazun wanted her to vote yes in the election. Rodriguez testified that she could not actually hear anything said by Cazun because she was driving in her own car at the time that she saw Cazun

Ginchansky testified that during the second session of the election, from 2:00 p.m. to 4:00 p.m., she was inside of the office in the Employer's building, but from time to time, she left to get things from her car parked across the street. On one occasion, when she was returning from her car, she noticed a parked car near the driveway on Downey Avenue leading to the parking area where the election was being held. Ginchansky testified that the person inside the car stopped a person who was walking on the sidewalk. Ginchansky did not know who these people were because she did not work at the facility and she did not approach the individuals. Ginchansky did not hear what they said because she saw them for only a few seconds before entering the building. When she entered the building she asked the Labor Consultant, Ernesto _____, who they were. Ernesto left and a few moments later told Ginchansky that it was Benita _____ and Carrie _____, employees of the Employer.⁸

The Employer does not allege that Cazun, Benita _____, or Carrie _____ are agents of the Petitioner.⁹

Discussion of Objection No. 2

If the actors were not agents of the Petitioner, the Board will set aside an election on the basis of third-party conduct only if the conduct is so aggravated that it creates a general atmosphere of fear and reprisal rendering a fair election impossible. Cal-West Periodicals, Inc., 330 NLRB 599, 600 (2000); Westwood Horizons Hotel, 270 NLRB 802, 803 (1984). The burden of proof lies with the objecting party. Cal-West Periodicals, supra at 600. The subjective reactions of

⁸ No evidence was presented regarding the last names of Ernesto, Bonita or Carrie.

employees are irrelevant to the question of whether there was, in fact, objectionable conduct.

Picoma Industries, Inc., 296 NLRB 498, 499 (1989).

I first consider the conduct of employee Cazun during the second session of the election. According to Rodriguez, she saw Cazun seated in a car, parked in the parking lot, briefly, as she was driving into the parking lot. Rodriguez could not hear if Cazun said anything. No one else saw Cazun while she was parked near the polling location. There is no evidence that Rodriguez described her experience with Cazun to any other employees. According to Rodriguez, Cazun nodded her head and moved her lips. I conclude that this does not establish that Cazun was engaged in any electioneering. Cazun's conduct falls short of creating a general atmosphere of fear and reprisal rendering a fair election impossible.

Ginchansky saw two people who she did not recognize as she was heading into the Employer's building. Nothing in the record establishes who those two people were. Ginchansky testified that Labor Consultant Ernesto told her that the two were Benita and Carrie, but since Ernesto did not testify, the record fails to establish their identity.¹⁰ In addition, I do not credit Ginchansky's testimony in regards to where she saw the car and how far it was from the election polls.¹¹

Even if it is assumed that there were two employees talking near the driveway leading to the polling area, such conduct is insufficient to set aside the election. The Employer failed to establish if Benita ____ or Carrie ____ were unit employees, what they were talking about, who saw them, how long they were out there, if any other employee was stopped by them or if they could be seen by voters in the polling area. Accordingly, the Employer has failed to meet its burden

⁹ The Employer's position was revealed in their oral argument presented at the conclusion of the hearing.

¹⁰ Ernesto, the Labor Consultant, did not testify so any statements credit to him by Ginchansky are hearsay and were not considered.

¹¹ Throughout the cross examination of Ms. Ginchansky she avoided questions and was overly broad when the questions asked for specific information. Also, she refused to examine Petitioner's Exhibit when asked to do so. I

of establishing that Cazun, Benita ____, or Carrie ____, or any other adherent of the Petitioner, engaged in electioneering so as to create a general atmosphere of fear of reprisal to require setting aside the election. Thus, I recommend that Employer's Objection No. 2 be overruled.

Objection No. 3

During the critical period, the Union threatened and harassed employees.

In support of this objection, the Employer provided the testimony of Certified Nurse Assistant Gracie Butler, Certified Nurse Assistant Taneeka Hearn, Certified Nurse Assistant Norma Elena Rodriguez, and Kitchen Employee Elina Melliz. The Petitioner provided testimony from Union Organizer Marjeli Cruz and Member-Organizer Francesca “Mia” Rivera.¹²

The Employer made seven separate allegations accusing the Petitioner of harassing and threatening employees. This section is divided into two parts: the first part examines the allegations that Rivera and Cruz, who are admitted Union agents, threatened and harassed employees. As described below I find the allegations without merit.

The second section examines the allegations that co-workers threatened and harassed employees. First, I examine whether the co-workers identified by Melliz and Rodriguez are agents of the Petitioner; and then I examine whether their actions were sufficient to set aside the election. As described below I find the allegations without merit.

Part I: Conduct of Rivera and Cruz

considered these actions and Ginchansky’s general attempts to outsmart the Petitioner’s attorney in finding her testimony not credible.

¹² The Petitioner stipulated in oral argument at the conclusion of the hearing that Rivera and Cruz were agents of the Petitioner.

Butler testified that in or about March 2010, Cruz came to Butler's house and asked Butler where she stood with the Union.¹³ Butler responded by saying that she did not know where she stood at the time and that she felt that any Union solicitation should be done at work.

Cruz testified that she went to Butler's home and spoke to her for about 15 to 20 minutes. Butler was unsure of where she stood with the Union, so Cruz told Butler that the Union would come back to answer any questions.

Butler testified that in or about March 2010, a person wanting to talk to her about the Union came to her door and she did not answer the door, so she was not sure who was at the door.¹⁴

Butler testified that again in or about March 2010, a Union agent came to the door and asked if she was home and Butler lied to the Union agent by telling her that she was not in and then the Union agent left.

According to Rivera, she visited Butler's home on two occasions, but she was not home.

Butler testified that about a week before the election, she was getting out of work at 11:00 p.m. with Taneeka Hearn, when Rivera approached them and "scared them".¹⁵ Butler asked for the person's name and Rivera stated her name and that she was from the Union. Rivera asked for Butler's position on the Union and Butler told Rivera that she did not want to be bothered. According to Butler, Rivera continued asking to talk to them as they walked to their car.

Hearn testified that in March 2010, she was coming out of work with her co-worker, Butler, at 11:00 p.m. when more than one Union agents approached them asking for Butler.

¹³ Butler did not recall the names of the two people that visited her, but Cruz, the Petitioner's organizer, testified that she was the one that visited Butler.

¹⁴ Butler testified that On or about March 2010, she received a call from her daughter at work stating that a Union agent had come to her house to see if she was home. The allegation is hearsay and will not be considered, as the daughter did not testify.

¹⁵ Butler did not recall the name of the Union agent that approached her, but Rivera testified that she approached Butler and Hearn after work. Hearn and Butler were "scared" because Rivera "jumped out of the bushes" at them.

¹⁶ Hearn testified that one of the Union agents testified that she was from the Union. The Union agent asked to speak to both Butler and Hearn for a few minutes. Neither Hearn nor Butler wanted to talk to the Union agent, but the Union agent kept talking to them until they got to the car and left.¹⁷

According to Rivera, a week before the Union election, at about 11:00 p.m., she remembered approaching Butler and Hearn. She testified that she introduced herself and asked Butler her position on the Union. Butler testified that she was going to wait until the day of the election to make her decision. After recognizing that Butler was not interested in talking to her, she moved on to talk to Hearn. Rivera testified that she did not follow Hearn or Butler to their car, instead after determining that they were not interested, she walked away.

Discussions of Allegations 1, 2 and 3

If the actors are actual or apparent agents of the Union, then the standard for determining whether the Union's conduct warrants overturn of the election is an objective standard: whether the conduct has "the tendency to interfere with the employees' freedom of choice."

Cambridge Tool Mfg., 316 NLRB 716 (1995). In determining whether a party's misconduct has the tendency to interfere with employees' freedom of choice, the Board considers: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among the employees in the bargaining unit; (3) the number of employees in the bargaining unit subjected to the misconduct; (4) the proximity of the misconduct to the election; (5) the degree to which the misconduct persists in the minds of the bargaining unit employees; (6) the extent of dissemination

¹⁶ Hearn mentioned an incident where a Union agent tried to talk to her after work. Hearn also testified that her former neighbor called her and told her that someone from the Union had come looking for her. There is insufficient detail to decide if there was objectionable conduct.

¹⁷ Hearn testified that her co-workers had told her prior to her encounter with Rivera, that Petitioner representatives were talking to employees when they were leaving work at 11:00 p.m. Hearn testified that in the past she had seen the

of the misconduct among the bargaining unit employees; (7) the effect, if any, of the misconduct by the opposing party to cancel out the effects of the original misconduct; (8) the closeness of the final vote; and (9) the degree to which the misconduct can be attributed to the party. Avis Rent-A-Car, 280 NLRB 580, 581 (1986).

In considering Cruz' conduct, there is no evidence that Cruz threatened or coerced Butler. Butler's main complaint with Cruz was that she was visiting her at home.

On the first Union visit, Butler did not even answer the door; and on the second visit, when Rivera came, Butler lied to her by telling her that she was not in. These home visits by Cruz may have been an inconvenience for Butler, but they were neither threatening nor coercive.

In considering Rivera's conduct, Rivera approached Butler and Hearn outside of work at 11:00 p.m. a week prior to the election. Rivera told Butler and Hearn her name and who she worked for, and then she asked them where they stood with the Union. Both Hearn and Butler testified that Rivera was persistent in wanting to talk to them even after they told her that they did not want to talk to her, but neither testified that they were threatened or coerced. Moreover, both Hearn and Butler had previous experience with Union representatives, and Hearn testified that she had heard from her co-workers about Union representative's soliciting Union support. Thus, Rivera did not engage in any threatening or coercive behavior.

Part II: Conduct of Employees Montes and Villareal

Union representatives, but she did not know they were Union representatives until her co workers told her who they were.

Rodriguez testified that she was “harassed” by co-workers when they asked her to support the Union and come to Union meetings, but did not identify who had harassed her.¹⁸

Melliz testified that on or about March 7, 2010, in the kitchen area, a co-worker smiled at her and starred at her.¹⁹ Melliz “felt” that this had something to do with the Union campaign. She asked the woman what she was looking at and the woman did not respond.

Melliz also testified that on or about March 7, 2010, Maria Villareal, a co-worker, was talking loudly to Ana Nava, a kitchen employee. Several co-workers were in the kitchen and Villareal told Nava that it was good that the Union would be representing the employees.²⁰

Ramirez testified that Maria Montes, a CNA, “harassed” her because of Ramirez’s support of the Employer in the Union election.²¹ Ramirez testified that on January 17, 2010, prior to the filing of the Petition hearing, she had a birthday party for her child, and Montes and a Union agent by the name of Alma Martinez were in attendance.²² During the party, Martinez started talking to Ramirez about the Union’s benefits when one of her guests, Michelle Carrizales, joined the conversation.²³ Carrizales stated that the Union did not provide the benefits that Martinez stated. Ramirez then stated that she was with Carrizales and she was against the Union as well.

¹⁸ Rodriguez testified that on one occasion her brother told her that two women came to the door and asked for her. Her brother, who did not know the two women, described them to Rodriguez and based on that description she knew they were from the Union. The brother did not testify.

¹⁹ Melliz testified that the person that starred and smiled at her was Maria Montes, but later in her testimony she testified that she did not recall who starred at her and smiled.

²⁰ Melliz testified that on March 10, 2010, after the election, Gladys Contreras, a Cook, harassed her by asking why she did not support the Union. Melliz also testified that on March 10, 2010, after the election she asked her supervisor Luis Juarez to go home because of a stomach ache caused by employees celebrating a Union victory. These events occurred after the election, so they will not be considered.

²¹ Ramirez testified that on or about March 2010, Montes made allegations about her being paid by the Employer to vote against the Union. Ramirez testified that she did not hear that from Montes, instead she heard it from co workers. The allegation is based on hearsay, so it will not be considered, as the co-workers did not testify.

²² Ramirez did not recall the last name of the Union agent, but Cruz testified that Alma Martinez was one of the Union organizers during the campaign.

²³ Michelle Carrizales is a friend of Ramirez and a former co worker at Rivera’s second job. Carrizales did not testify at the hearing.

Ramirez testified that after the party, she noted that Montes “changed her behavior towards her.”²⁴

Ramirez testified that at work, Montes started reporting any mistake she made to supervisors. Ramirez testified that she “knew” Montes reported her to management because every time she was called into the office she saw Montes walking out of the office.

Ramirez testified that on or about January 24, 2010, she over heard Montes tell employees that Ramirez had come to work drunk and that Ramirez did not do good work.

Ramirez testified that in late January 2010, Montes filed a complaint with the Employer saying that Ramirez tried to hit her in the hallway. Ramirez stated that she later found out that an investigation was conducted and that no merit was found to the allegation.

Discussion of Allegations 4, 5, 6 and 7

Agency Status Analysis

In deciding agency status, the Board is guided by common law principles. Under these principles, an agent's authority may be actual or apparent. Actual authority to act on the principal's behalf is that which is either expressly or impliedly created by the principal's manifestation to the agent, while apparent authority is that which is created as a result of the principal's manifestation to a third party that another is its agent. Electrical Workers Local 98 (MCF Services), 342 NLRB 740 (2004). The burden of establishing agency status is on the party asserting such a relationship. Comer Furniture Discount Center, Inc., 339 NLRB 1122 (2003).

Here, the status of Montes and Villareal are in dispute. Though Montes supported the Union and solicited employees to sign a Union petition; and Villareal made a statement in support of Union representation, this is insufficient to establish they were agents of the Union. Further, the Employer provided no evidence that at any time the Union gave the impression that it

²⁴ Ramirez testified that sometime before January 17, 2010, Montes asked her to support the Union by signing a petition

gave any employee any authority to represent the Union. See United Builders Supply Co., 287 NLRB 1364, 1365 (1988) (where the Board held that enthusiastic employee activist, who solicited and obtained signatures on authorization cards, organized and informed employees of Union meetings, and served as election observer for Union, were not general agent of Union under the principles of actual or apparent authority where the Union had its own admitted agent involved in the campaign). Therefore, I conclude that Montes and Villareal were not agents of the Petitioner and that they were, instead, third-party actors.

As for the unknown actors cited by Rodriguez and Melliz, it is the Employer's burden to establish agency. Because there were no facts establishing that the unknown actors were agents of the Union, I find that they also were third party actors.

Conduct Analysis

If the actors were not agents of the Union, the Board will set aside an election on the basis of third-party conduct only if the conduct is so aggravated that it creates a general atmosphere of fear and reprisal rendering a fair election impossible. Cal-West Periodicals, Inc., 330 NLRB 599, 600 (2000); Westwood Horizons Hotel, 270 NLRB 802, 803 (1984). The burden of proof lies with the objecting party. Cal-West Periodicals, supra

and she told Montes that she was not interested in the Union.

at 600. The subjective reactions of employees are irrelevant to the question of whether there was, in fact, objectionable conduct. Picoma Industries, Inc., 296 NLRB 498, 499 (1989).

The conduct of Employees Montes and Villareal noted above, is insufficient to set aside the election. Rodriguez testified that unknown co-workers frequently asked for her support in the Union election. Rodriguez did not mention any threats or coercive statements made by the employees. Melliz made two separate allegations. In one she testified that an unknown employee smiled at her and she took that to be connected to the Union election. There is no evidence that this employee had a history of harassing Melliz or that any threats or coercive statements were made to her. In Melliz's second allegation she testified that Villareal stated loudly that she supported the Petitioner. There is no evidence of threats or coercive statements.

Ramirez testified that Montes engaged in harassing behavior against her because of her support for the Employer in the Union election. She testified that Montes made allegations to the Employer about her work performance and falsely alleged that she had been violent towards Montes. In addition, Ramirez alleged that Montes spoke negatively about her with co-workers. Ramirez connects these actions by Montes to a party she had in January 17, 2010, where she told Montes she supported the Employer. I conclude that the evidence fails to link any harassment by Montes to Ramirez' anti-Union sentiments.

Even assuming that there is a link between Ramirez' anti-Union sentiments and Montes' conduct towards her, it does not amount to threats or coercion. The evidence fails to establish that the conduct by Montes or Villareal created an atmosphere of fear and reprisal rendering a fair election impossible. Accordingly, I find no merit to Objection No. 3 and recommend that it be overruled.

Objection No. 4

The Union made statements regarding the waiver of initiation fees.

In support of this objection, the Union submitted into evidence a copy of a Union flyer, Employer's Exhibit 3. The Union admits passing out the flyer to employees during the critical period.

The flyer, which is undated, stated in the top half: "We are Union member of Country Villa North and East! We VOTED YES for SEIU and now we have a say in wages, benefits, and how management treats us." In the bottom half of the flyer the headline stated: "Lies You Might Have Heard." Underneath, in bold letters, it states: "You will pay initiation fees." Underneath this bolded statement it says: "There are no initiation [fees]. When we joined SEIU we did not pay initiation fees." The second bold statement says: "You will have to pay dues before you negotiate a contract." Underneath this statement it says: "You won't pay a cent until you vote to approve your contract. When we joined SEIU we did not have [to] pay dues until we voted on our contract." The Employer asserts that the above-quoted language created the impression among employees that the Petitioner would waive its initiation fees and dues for employees who joined the Union before the election, but not for others. A copy of this flyer is attached to this Report as "Attachment".

There is no evidence that an agent of the Union or an employee stated that waiver of initiation fees would only go to Union supporters.

Discussion of Objection No. 4

It is well established that a Union's offer to waive initiation fees or dues is not objectionable as long as the offer is not limited to employees who join the Union before the election, but remains open to employees who join after an election as well. See NLRB v. Savair

Manufacturing Co., 414 U.S. 270 (1973); see also L.D. McFarland Co., 219 NLRB 575 (1975); Lau Industries, 210 NLRB 182 (1974).

Here, it is concluded that the Union's flyer fails to state that supporting the Union before the election will mean that the employee will not have to pay dues. Accordingly, I find no merit to Objection No.3 and recommend that it be overruled.

IV. Summary of Recommendations

Having made the above findings and conclusions with respect to the Employer's Objections Nos. 1, 2, 3 and 4, viewing the alleged objectionable conduct both individually and cumulatively, and upon the record as a whole, I recommend that the Employer's Objection Nos. 1, 2, 3 and 4 be overruled. Accordingly, I recommend that a Certification of Representative be issued.

V. Right to File Exceptions

Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Procedures for Filing Exceptions: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on May 28, 2010, at 5:00 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-**

Government initiative, parties are encouraged to file exceptions electronically. If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations preclude acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.²⁵ A copy of the exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

DATED at Los Angeles, California, this 14th day of
May, 2010.

/s/Isael Hermosillo
Hearing Officer, Region 21
National Labor Relations Board

²⁵ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.